

### **DETAILED ACTION**

Receipt of RCE and IDS dated 4-28-08 is acknowledged.

Claims 5 and 9-11 are pending in the instant application.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 4-28-08 has been entered.

#### ***Claim Rejections - 35 USC § 112***

2. Claims 5 and 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Instant claims are indefinite with respect to the expression "passage of time" because it is unclear as to what is the length of time up to which t-butanol suppresses smell change or odor change at a concentration of 0.01 to 1000 ppm. Is it minutes, hours, day, months or years? A clarification is requested.

#### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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4. Claims 5 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Research Disclosure 2001 in view of any one of US 6190645 (US 645) or Industry Circular.

Research Disclosure 2001 teaches cosmetic compositions comprising surfactants such as oleath-20, laureth and SD Alcohol 40 (Aerosol mousse example on page 1842 and gel formulation example on page 1843), of which the surfactants read on the instant oxyethylene group containing surfactant and is also described in the instant example 5. The compositions of Research Disclosure do not state tert-butanol of instant claims.

However, US '645 states (col. 3, lines 47-54) that SD alcohol 40 is an ethyl alcohol that has been denatured with tert-butyl alcohol. Similarly, Industry Circular mentions different forms of SD alcohol 40, each of which is denatured with ethyl alcohol with a significant proportion of tert-butanol. Thus, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made that the SD 40 alcohol of the cosmetic compositions of Research Disclosure contain t-butanol and even though the reference fails to teach the claimed method for suppressing smell change odor generation with passage of time in a cosmetic, it is implicit from the teachings of US 645 and Industry Circular that the SD 40 alcohol containing tert-butanol is effective in inhibiting the suppression of odor or smell change of oleath-20 or laureth surfactants of Research Disclosure. With respect to the amount of butanol, instant claims recite as low as 0.01 ppm. While the references fail to teach the amount of butanol, denaturing alcohol utilizes a significant portion of butanol

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(according to Industry Circular). Accordingly, the burden is shifted to applicants to show that 8% alcohol in the mousse or gel compositions do not suppress the smell or odor change caused by the surfactants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM - 5.30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Lakshmi S Channavajjala/  
Primary Examiner,  
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